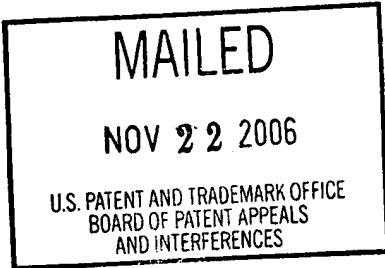


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte RAYNER BRONDRUP

Application No. 09/788,402

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences (BPAI) on November 8, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appeal Brief Problem

Appellants filed an Appeal Brief on February 13, 2006.

The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters, and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. § 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and the drawings, if any, by reference characters (37 CFR § 41.37(c)(1)(v)).

Appellants “V. SUMMARY OF THE CLAIMED SUBJECT MATTER” on page 7 of the brief does not sufficiently map the subject matter of the independent claims to its location in the specification and/or drawings as outlined above. A substitute brief containing a more detailed Summary of the Claimed Subject Matter is required.

Examiner’s Answer Problem

The Examiner’s Answer mailed May 4, 2006 does not list the prior art of record being relied upon in the rejections. Page 3 of the Examiner’s Answer contains a section heading titled “**(8) Evidence Relied Upon**” that states “[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal”. The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) defines the above heading as follows:

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

The Examiner’s §103(a) rejections are based on at least 3 U.S. patents and a non-patent article (Worcester). As per the above definition, these references and any other evidence relied upon in the rejections should be listed under the “**(8) Evidence Relied Upon**” heading in the Examiner’s Answer. Additionally, it is noted that we do not find a copy of the Worcester reference in the application’s Image File Wrapper (IFW). Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner

- a.) to hold the Appeal Brief filed February 13, 2006, defective for the reason(s) noted above and notification to Appellants to file a substitute Appeal Brief in full compliance with 37 CFR § 41.37(c)(1)(v),
- b.) for consideration of the substitute Appeal Brief,
- c.) to issue a revised Examiner's Answer listing the prior art of record and any other evidence being relied upon in the rejection(s) of the appealed claims beneath the Evidence Relied Upon heading,
- d.) for the Examiner to have a copy of the Worcester reference relied upon in the Answer, scanned into the application's IFW, and
- e.) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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DMS/vsh

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